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Federal Communications Commission
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Rulemaking to Amend Parts 1, 21, and 25)	CC Docket No. 92-297
of the Commission's Rules to Redesignate)	
the 27.5-29.5 GHz Frequency Band, to)	
Reallocate the 29.5-30.0 GHz Frequency)	
Band, to Establish Rules and Policies for)	
Local Multipoint Distribution Service and)	
for Fixed Satellite Services)	

COMMENTS OF GE AMERICAN COMMUNICATIONS, INC.
 ON PETITIONS FOR RECONSIDERATION OR CLARIFICATION

GE American Communications, Inc. ("GE Americom"), by its attorneys, hereby comments on the Petitions for Reconsideration or Clarification filed by Hughes Communications Galaxy, Inc. (the "HCG Petition") and by Teledesic Corporation (the "Teledesic Petition") with respect to the Commission's *Third Report and Order*, FCC 97-378 (released Oct. 15, 1997) (the "*Order*"), in the above-captioned proceeding.

GE Americom fully supports the HCG Petition, which requests that the Commission clarify the satellite milestone rule, provide additional information regarding international coordination agreements relevant to implementation of the band plan, and address the international spectrum requirements of GSO licensees. However, GE Americom opposes Teledesic's argument that it should not be required to make accommodations for new entrants. GE Americom believes that the

Commission's decision strikes the appropriate balance between licensees and new applicants.

I. THE HCG PETITION SHOULD BE GRANTED

The HCG Petition seeks limited clarification or reconsideration of three aspects of the *Order*. All three of HCG's suggestions should be adopted.

First, HCG requests minor modifications to the text of Section 25.145(f) with respect to satellite system implementation milestones. HCG Petition at 2-3. As HCG explains, the Commission did not adopt milestones for Ka-band GSO systems with intersatellite links ("ISLs"), pending assignment of ISL frequencies. However, the current language of Section 25.145(f) does not make clear that construction and launch milestones do not begin to run until an unconditional authorization for a system has been granted. GE Americom agrees that clarification of this rule is appropriate to ensure that there is no conflict between the language of the rule and the Commission's decision to defer setting milestones for systems with ISLs. ^{1/}

Second, HCG seeks additional information regarding international coordination agreements that affect implementation of the U.S. band plan for Ka-band spectrum. HCG Petition at 3-5. The *Order* indicates that U.S. satellite

^{1/} Although GE Americom's original Ka-band system design did not include ISLs, GE Americom has requested modification of its authorizations to permit the use of ISLs and deferral of its system milestones pending assignment of ISL frequencies. GE Americom's modification application was unopposed and is pending before the Commission. See File Nos. 18-SAT-ML-98, 19-SAT-EXT-98.

licensees will be generally required to comply with the band plan throughout the world, but states that exceptions will be necessary to accommodate coordination agreements with other administrations entered into before the band plan was adopted. *Order* at ¶ 69. However, the *Order* provides no information regarding these agreements or their effect on Ka-band GSO system licensees. GE Americom supports HCG's request for such information to permit GSO licensees to understand the precise scope of their obligations to accommodate foreign agreements that are inconsistent with the band plan.

Third, HCG asks that the Commission act with respect to the international spectrum requirements of GSO licensees. HCG Petition at 5-6. GE Americom agrees that it is appropriate for the Commission to clarify the rights of GSO systems to operate internationally in Ka-band frequencies where GSO operations are permitted under the Commission's band plan.

II. THE ORDER ESTABLISHES A PROPER BALANCE WITH RESPECT TO TELEDASIC'S OBLIGATION TO ACCOMMODATE NEW ENTRANTS

The Commission should reject Teledesic's argument concerning the Commission's authority to require Teledesic to make design changes to accommodate new applicants. Teledesic Petition at 16-24. Although the Commission declined in the *Order* to mandate specific sharing principles or mitigation techniques, the Commission stated that:

we expect all non-Government NGSO FSS systems to be responsible for some portion of the burden-sharing. Specifically, we expect all NGSO FSS

licensees to bear some portion of the technical and operational constraints necessary to accommodate multiple “non-homogeneous” NGSO FSS systems. In apportioning burden, it may be appropriate to consider factors such as whether a particular NGSO FSS satellite is already in-orbit and operational.

Order at ¶ 38. This language is consistent with the Commission’s obligation to evaluate sharing burdens in light of the public interest and should be affirmed.

Teledesic objects that under existing Commission precedent licensees should not be required to “significantly alter” their systems to accommodate new entrants. *Teledesic Petition* at 16. Teledesic argues that such a requirement would undermine the certainty associated with Commission licenses and make it difficult for a licensee to finalize its system design. *Id.* at 17-18; 22-23.

Teledesic is wrong as a matter of law and policy. The certainty associated with Commission licenses is important and should be protected, but it is not absolute. As Teledesic itself acknowledges, “[a]ll licenses are subject to regulatory modification if the public interest so requires.” *Id.* at 16, citing 47 U.S.C. § 316.

Furthermore, the Commission here was addressing unique factual circumstances. It had allocated spectrum for NGSO FSS services, but received only one application for such services in the initial processing round. Unlike GSO technology, which permits multiple providers to operate in the same spectrum at orbital locations spaced two degrees apart, NGSO systems require global access to spectrum, making spectrum sharing issues more complicated. Given long-standing

Commission policies in support of multiple entry, the Commission properly put Teledesic on notice in the *Order* that it might be required to bear some burden to accommodate new entrants. Teledesic cannot reasonably expect its system to be given preclusive effect, preventing new applicants from operating in the same spectrum.

In light of these facts, the language of the Commission's *Order* appropriately reflects the Commission's obligation to make public interest determinations in assigning responsibility for sharing between licensees and new entrants. This is particularly true where, as here, the licensee concerned is still "three to four years away" from launching its first satellite. Teledesic Petition at 18 n.30.

The *Order* makes clear that in determining how interference avoidance burdens should be shared, the Commission will not simply ignore the distinction between current licensees and new applicants. Instead, the Commission emphasizes that it will consider "whether a particular NGSO FSS satellite is already in-orbit and operational" (*Order* at ¶ 38) in making such assessments. Teledesic provides no reason why the Commission's discretion to weigh such equitable factors in making spectrum sharing decisions should be constrained.

The concerns raised by Teledesic here can properly be considered by the Commission when it must determine how to apportion sharing burdens to permit multiple systems to use the spectrum in which Teledesic holds a license. At that time, the Commission will be able to evaluate the technical steps that are

needed to facilitate sharing and the impact those steps will have on Teledesic's system design. Teledesic's arguments here are a simple attempt to get the Commission to prejudge these issues without the necessary facts. The Commission's decision is consistent with its public interest obligations and should be affirmed.


CONCLUSION

GE Americom urges the Commission to adopt the minor clarifications requested in the HCG Petition. However, the *Order* strikes the correct balance with respect to sharing obligations of licensees and new entrants, and Teledesic's objections to that language should be rejected.

Respectfully submitted,

GE AMERICAN COMMUNICATIONS, INC.

Philip V. Otero
Senior Vice President and
General Counsel
GE American Communications, Inc.
Four Research Way
Princeton, NJ 08540

By: 

Peter A. Rohrbach
Karis A. Hastings
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Comments of GE American Communications, Inc. on Petitions for Reconsideration or Clarification were served by hand delivery this 5th day of February, 1998 to:

Thomas S. Tycz, Chief
Satellite and Radiocommunication Division
Federal Communications Commission
2000 M Street, N.W., Room 800
Washington, D.C. 20554

Fern J. Jarmulnek, Chief
Satellite Policy Branch
Satellite and Radiocommunication Division
Federal Communications Commission
2000 M Street, N.W., Room 500
Washington, D.C. 20554

Jennifer Gilsenan
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 517
Washington, D.C. 20554

and by first class mail, postage prepaid to:

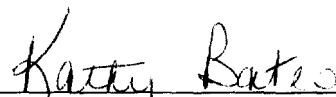
Mark A. Grannis
Evan R. Grayer
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5036

Jonathan D. Blake
Kurt A. Wimmer
Jennifer A. Johnson
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044

Dr. Farzad Ghazvinian
Vice President
Teledesic Corporation
2300 Carillion Point
Kirkland, WA 98033

John P. Janka
Arthur S. Landerhold
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004

Scott B. Tollefsen
Vice President, General Counsel
& Secretary
1500 Hughes Way
Long Beach, CA 90810


Kathy Bates